

## **REMARKS<sup>1</sup>**

Claims 1-17 are pending. In the Office Action mailed May 12, 2009 ("OA"), the Examiner rejected claims 1-17. With this response, Applicant respectfully traverses the rejections and request reconsideration based on the following remarks. In addition, Applicant does not necessarily agree with or acquiesce to the Examiner's characterization of the claims or the prior art, even if those characterizations are not addressed herein.

By this Amendment, Applicant amends claims 1, 3, 8-13, and 16-17. The amendments are supported throughout the specification. Claims 1-17 are currently pending for examination with claims 1 and 17 in independent form. Applicant respectfully requests reconsideration and allowance of the application for the reasons presented below

### **Claim Rejections - 35 U.S.C. § 103**

The Examiner rejected claims 1-4 and 11 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication 2006/0193248 A1 ("*Filsfils*") in view of U.S. Patent Publication 2006/0262735 A1 ("*Guichard*"). Although Applicant disagrees with the Examiner's characterization of the prior art, Applicant has nonetheless amended claims 1, 3, 8-13 and 16-17 to expedite examination of the application.

Applicant respectfully traverses the rejection of claims 1-4 and 11 because a *prima facie* case of obviousness has not been established by the examiner for amended

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<sup>1</sup> As Applicant's remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicant's silence as to certain assertions or requirements applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, etc.) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such in the future.

claim 1, and claims 2-4 depend on amended claim 1. M.P.E.P. § 2142 (Examiner bears the initial burden of factually establishing a *prima facie* conclusion of obviousness). Here, a *prima facie* case of obviousness has not been established for amended claim 1 because the Examiner has not properly ascertained the differences between the claimed invention and the prior art.

Claim 1 includes “selecting, by the double-ascription PE of the remote CE, one or more available tunnels according to the state of each tunnel from the at least two tunnels...” (emphasis added) The Examiner characterized paragraph 0054 of *Filsfils* as teaching such a limitation, but this is incorrect. Moreover, nothing in *Filsfils* nor the entirety of *Guichard* teaches this limitation.

*Filsfils* reroutes packets that were intended to be transmitted through a first PE to a first CE (in the absence of a network fault between the first PE and first CE) such that those packets are transmitted from the first PE to a second PE and then to a second CE. *Filsfils* makes this rerouting decision at the PE that detected the fault (e.g., the first PE in this example). See *Filsfils* paragraphs 0043-0044, which discuss how path 205 is utilized when PE1 (i.e., element 400a in Figure 2) determines that it cannot communicate with CE1. Importantly, Applicant’s amended claim 1 recites this determination being made in the double-ascription PE rather than in the first PE as in *Filsfils*. Thus, *Filsfils* fails to teach at least this limitation of amended claim 1.

The Examiner asserts that *Filsfils* teaches a memory 440 within PE 400, that the memory 440 may include a separate label forwarding table 500 for storing IGP label information, and that the IGP label determines the packet’s next hop within a routing domain and is the top label over a VPN label. See OA, page 2. Applicant respectfully

submits that in *Filsfils*, the PE 400 refers to a PE connected to the CE (see *Filsfils* paragraph 0043), but in Applicant's amended claim 1, the method is performed by a double-ascription PE. Although the device 400 has a label forwarding table 500, the content of the table 500 differs from the routing information in the currently amended claim 1. Furthermore, when the operating system 460 in *Filsfils* detects a node or link failure over a PE-CE link, this determination is made by the PE connected to the CE, in contrast to Applicant's amended claim 1. See *Filsfils* paragraph 0056.

*Guichard* discloses a system and method for separately distributing edge-device labels and routing information across routing areas of a computer network. See *Guichard*, abstract. *Guichard* does not, however, disclose any method for making a rerouting determination upon detection of a network fault. Nor does *Guichard* disclose making such a determination at a double-ascription PE. Thus, *Guichard* also fails to teach at least this limitation of amended claim 1.

On these bases, Applicant respectfully traverses the obviousness rejection of amended claim 1 while reserving the right to disagree with other characterizations of the prior art if a *prima facie* case of obviousness is later established. M.P.E.P. § 2142 ("If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.").

The Examiner rejected claims 2-4 under 35 U.S.C. § 103(a) as being unpatentable over *Filsfils* in view of *Guichard*. Applicant respectfully traverses the rejections for claims 2-4 on the basis that each of those claims depend on claim 1 and a *prima facie* claim of obviousness has not been established for claim 1. Additionally, Applicant reserves the right to disagree with other characterizations of the prior art

concerning claims 2-4.

The Examiner rejected claims 5-10 under 35 U.S.C. § 103(a) as being unpatentable over *Filsfils* in view of *Guichard* in further view of *Gouge*. Applicant respectfully traverses the rejections for claims 5-10 on the basis that each claim depends on claim 1 and a *prima facie* claim of obviousness has not been established for amended claim 1 as previously discussed. Additionally, Applicant reserves the right to disagree with other characterizations of the prior art concerning claims 5-10.

Amended claim 11 includes a “Provider Edge (PE) equipment ...; wherein the PE is a double-ascription PE of a remote Customer Edge (CE) ....” Thus, this limitation is similar to the aforementioned limitation included in amended claim 1, which Applicants assert is not taught by either *Filsfils* or *Guichard*. For this reason, amended claim 11 is patentably distinguished from *Filsfils* in view of *Guichard* for at least the same reasons. Finally, claims 12-17 all depend from independent claim 11 and are patentable for at least the same reasons.

### Conclusion

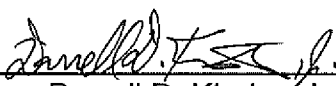
In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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